

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 710 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

GUJARAT ELECTRICITY BOARD

Versus

HEIRS OF CHAUDHARI PRABHUDAS VALJIBHAI

Appearance:

1. Civil Revision Application No. 710 of 2000
MR SN SINHA for Petitioner No. 1
..... for Respondent No. 1
MR PK JANI for Respondent No. 1/A-1/C4
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/03/2004

ORAL JUDGEMENT

The petitioner is the original plaintiff of Regular Civil Suit No.45 of 1996. The said suit was

initially filed against one Prabhudas Valjibhai Chaudari for recovery of electricity dues as according to the plaintiff, the defendant even though has consumed the electrical energy has not paid the bill. During the pendency of the said suit, the said defendant expired on 1.7.1997. The plaintiff, thereafter, gave an application Exh.29 for bringing the heirs of the deceased on record. On behalf of the plaintiff, it was prayed that the plaintiff was initially not aware about the death of the defendant and since the said fact came to its knowledge at a later point of time, the application was preferred with a prayer for condonation of delay in filing such application. The Trial Court rejected the said application on the ground that the application is filed after about 14 months and the same was not filed within 90 days. On behalf of the plaintiff, Mr.Sinha submitted that the plaintiff is the Electricity Board and that the defendant was not a regular consumer and the electricity connection was already disconnected. He submitted that therefore, the fact about the death of the defendant was not within the knowledge of the plaintiff Board. He submitted that it was the duty of advocate of the defendant to inform the Court about the death of the defendant. Mr.Sinha submitted that by the impugned order, the entire suit is disposed of as ultimately, it results into abatement of the suit and revision is maintainable under Civil Procedure Code. It is submitted by Mr.Sinha that the plaintiff-Board is a public body and therefore, a liberal approach was required to be taken, especially when the Board was not aware about the death of the defendant.

2. On the last occasion, when the matter was placed for hearing, attempts were made by the parties to settle the dispute. Mr.Sinha, Learned Advocate for the Board, after taking instructions from his client, submitted that the Board was willing to accept the principal amount by forgoing even the interest amount. At that time, Mr.Unwala, Learned Advocate for Mr.P.K.Jani appearing on behalf of the respondent submitted that one Chandubhai Chaudhri who is the son of one of the respondents told him that the defendants are willing to settle the dispute by paying the principal amount, but some installments are required to be given. However, today Mr.Unwala submitted that the defendants are not ready to settle the dispute. Under the circumstances, now the matter is required to be decided on its own merits.

3. The Trial Court has failed to appreciate the fact that the plaintiff has clearly stated in the application that from the date of knowledge about the death of the

defendant, the application for bringing the heirs of the deceased - defendant on record is filed. Simply because the application is filed at a delayed stage is no ground for rejecting the same if appropriate grounds are given for such delay. It is required to be noted that the plaintiff board is a public body and therefore, it may not be possible to know the exact date of the death of the defendant. In fact, the Advocate of the defendant was also required to inform the Court about the aforesaid fact. Considering the aforesaid aspect of the matter, in my view, the order of the Trial Court is required to be quashed and set aside and accordingly, the same is quashed and set aside. The application submitted by the plaintiff before the Trial Court for bringing on record the heirs of deceased defendant is granted. The application submitted by the plaintiff stands allowed. The Registry of the Trial Court is directed to amend the cause title appropriately by describing the names of the heirs of the deceased in the cause title of the suit.

Since the suit is of 1996, the Trial Court is directed to dispose of the said suit at the earliest and latest by 31.12.2004. This Civil Revision Application is accordingly allowed. Rule is made absolute with costs quantified at Rs.3000/-, since an absolutely unjust stand is taken by the respondents in the present proceedings. The respondents are directed to deposit the said amount before the Trial Court on or before 15.4.2004.

(P.B.Majmudar, J)

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